

**July 25, 2006**

SUBJECT: Resolution Authorizing Destruction of Certain Documents Pertaining to Police and Fire General File Records, Criminal Offender Records Information Logs, Arrest Logs, Applicant License and Permit Files, Subpoena Documentation, Citations Files, and Court Case Complaint Records Eligible for Destruction.

REPORT IN BRIEF

The Department of Public Safety retains files, records and reports generated by staff during the performance of their duties. These documents are required to be maintained as official records for set periods of time but can be legally deleted when the time period expires, as it is unlikely that they will have continuing usefulness.

The California Government Code Section 34090 and the California Penal Code Section 832.5, (Attachment A) authorizes the destruction of documents that are no longer of value to the Department, upon adoption of a resolution authorizing such destruction.

Staff recommends that Council adopt a resolution authorizing the destruction of documents identified as being of not further use.

BACKGROUND

Many original documents generated by City employees are by definition "official public records" and must be retained according to a specific set of legal guidelines. The listed materials which are proposed for destruction have been retained for the specified period for public records. Upon review it has been determined that they no longer have value requiring their retention as public documents and can be destroyed. California law authorizes their destruction.

EXISTING POLICY

Public Safety Support Services Sub-Element Policy 4.3C.1
Provide accurate and efficient document management.

Action Statement 4.3C.1c

Destroy official records in a timely manner consistent with all laws and ordinances regulating such destruction.

DISCUSSION

The specific records proposed for destruction are:

Selected Public Safety Department documents relating to Police and Fire general file records, Criminal Offender Records Information logs, arrest logs, applicant license and permit files, Subpoena documentation, citations files, and court case complaint records (Attachment A). These documents are considered to have no further usefulness to the Department, and are no longer of value to the City. These documents meet the criteria for destruction under California Government Code 34090 and California Penal Code Section 832.5.

FISCAL IMPACT

None

CONCLUSION

Existing policy and California Law indicate that original documents prepared in the ordinary course of business that meet specified criteria for destruction may be destroyed upon resolution by the City Council. Staff has identified these records and requests that Council approve such resolution.

PUBLIC CONTACT

Public contact was made through posting of the Council agenda on the City's official notice bulletin board, posting of the agenda and report on the City's web page, publication of the Council agenda in the *San Jose Mercury News*, and the availability of the report at the Library and the City Clerk's Office.

ALTERNATIVES

1. Approve resolution for destruction of specified records from the Department of Public Safety.
2. Do not approve resolution for destruction of specified records from the Department of Public Safety and thereby continue to retain the records.

RECOMMENDATION

Staff recommends Alternative #1, that Council approve the resolution allowing for the destruction of specified records from the Department of Public Safety.

Reviewed by:

Don Johnson, Director, Public Safety
Prepared by: Heather Tannehill, Manager

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Approved by:

Amy Chan
City Manager

Attachments

- A. Records Destruction Legislation
- B. Request for Permission to Destroy Public Records
- C. Records Inventory Log
- D. Resolution Approving Destruction of Specified Public Records

Attachment A

Records Destruction Legislation

California Government Code:

34090. Unless otherwise provided by law, with the approval of the legislative body by resolution and the written consent of the city attorney the head of a city department may destroy any city record, document, instrument, book or paper, under his charge, without making a copy thereof, after the same is no longer required.

This section does not authorize the destruction of:

- (a) Records affecting the title to real property or liens thereon.
- (b) Court records.
- (c) Records required to be kept by statute.
- (d) Records less than two years old.
- (e) The minutes, ordinances, or resolutions of the legislative body or of a city board or commission.

This section shall not be construed as limiting or qualifying in any manner the authority provided in Section 34090.5 for the destruction of records, documents, instruments, books and papers in accordance with the procedure therein prescribed.

34090.5. Notwithstanding the provisions of Section 34090, the city officer having custody of public records, documents, instruments, books, and papers, may, without the approval of the legislative body or the written consent of the city attorney, cause to be destroyed any or all of the records, documents, instruments, books, and papers, if all of the following conditions are complied with:

(a) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or reproduced on film, optical disk, or any other medium in compliance with Section 12168.7 for recording of permanent records or nonpermanent records.

(b) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one which accurately and

legibly reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.

(c) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are made as accessible for public reference as the original records were.

(d) A true copy of archival quality of the film, optical disk, or any other medium reproductions shall be kept in a safe and separate place for security purposes.

However, no page of any record, paper, or document shall be destroyed if any page cannot be reproduced on film with full legibility. Every unreproducible page shall be permanently preserved in a manner that will afford easy reference.

For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

34090.6. (a) Notwithstanding the provisions of Section 34090, the head of a department of a city or city and county, after one year, may destroy recordings of routine video monitoring, and after 100 days may destroy recordings of telephone and radio communications maintained by the department. This destruction shall be approved by the legislative body and the written consent of the agency attorney shall be obtained. In the event that the recordings are evidence in any claim filed or any pending litigation, they shall be preserved until pending litigation is resolved.

(b) For purposes of this section, "recordings of telephone and radio communications" means the routine daily taping and recording of telephone communications to and from a city, city and county, or department, and all radio communications relating to the operations of the departments.

(c) For purposes of this section, "routine video monitoring" means videotaping by a video or electronic imaging system designed to record the regular and ongoing operations of the departments described in subdivision (a), including mobile in-car video systems,

jail observation and monitoring systems, and building security taping systems.

(d) For purposes of this section, "department" includes a public safety communications center operated by the city or city and county.

34090.7. Notwithstanding the provisions of Section 34090, the legislative body of a city may prescribe a procedure whereby duplicates of city records less than two years old may be destroyed if they are no longer required.

For purposes of this section, video recording media, such as videotapes and films, and including recordings of "routine video monitoring" pursuant to Section 34090.6, shall be considered duplicate records if the city keeps another record, such as written minutes or an audiotape recording, of the event that is recorded in the video medium. However, a video recording medium shall not be destroyed or erased pursuant to this section for a period of at least 90 days after occurrence of the event recorded thereon.

California Penal Code:

832.5. (a) (1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.

(2) Each department or agency that employs custodial officers, as defined in Section 831.5, may establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established shall comply with the provisions of this section and with the provisions of Section 832.7.

(b) Complaints and any reports or findings relating to these complaints shall be retained for a period of at least five years. All complaints retained pursuant to this subdivision may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. However, prior to any official determination regarding promotion, transfer, or disciplinary action

by an officer's employing department or agency, the complaints described by subdivision (c) shall be removed from the officer's general personnel file and placed in separate file designated by the department or agency, in accordance with all applicable requirements of law.

(c) Complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, shall not be maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and Section 1043 of the Evidence Code.

(1) Management of the peace or custodial officer's employing agency shall have access to the files described in this subdivision.

(2) Management of the peace or custodial officer's employing agency shall not use the complaints contained in these separate files for punitive or promotional purposes except as permitted by subdivision (f) of Section 3304 of the Government Code.

(3) Management of the peace or custodial officer's employing agency may identify any officer who is subject to the complaints maintained in these files which require counseling or additional training. However, if a complaint is removed from the officer's personnel file, any reference in the personnel file to the complaint or to a separate file shall be deleted.

(d) As used in this section, the following definitions apply:

(1) "General personnel file" means the file maintained by the agency containing the primary records specific to each peace or custodial officer's employment, including evaluations, assignments, status changes, and imposed discipline.

(2) "Unfounded" means that the investigation clearly established that the allegation is not true.

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(3) "Exonerated" means that the investigation clearly established that the actions of the peace or custodial officer that formed the basis for the complaint are not violations of law or department policy.

Attachment B

REQUEST FOR PERMISSION TO DESTROY PUBLIC RECORDS

I, Don Johnson, Director of Public Safety, declare:

- That I am the Department Head having under my charge the records, instruments, books or paper more specifically described on the attached log.
- That the retention of the described material is no longer required.
- That the material contains no records affecting the title to real property or liens there on.
- That the material does not consist of court records.
- That the material does not consist of records required to be kept by statute.
- That the material contains no records less than two (2) years old.
- That the material does not consist of the minutes, ordinances, or resolutions of the City Council of the City of Sunnyvale, or of any City Board or Commission.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: July 25, 2006

Don Johnson, Director

Department of Public Safety

Attachment C

**DEPARTMENT OF PUBLIC SAFETY
RECORDS INVENTORY LOG**

Record Description - All Records Date Up To and Including December 31, 2002

All Police and Fire Report General File Records – All documents related to Sunnyvale Department of Public Safety Police and Fire reports prepared in the course of ordinary business that occurred prior to January 1, 2003.

California Department of Justice CORI Logs – Documentation relating to inquiries made into Criminal Offender Record Information databases for law enforcement purposes, dated prior to January 1, 2003.

Arrest Logs – Documentation in the form of logs containing names, dates and offenses of individuals arrested by the Sunnyvale Department of Public Safety, which occurred prior to January 1, 2003.

Applicant License and Permit Files - All documents relating to applicant license and permit files issued and maintained by the Department of Public Safety Records Unit, prepared in the course of ordinary business, whether issued or not issued, dated prior to January 1, 2003.

Subpoena Duces Tecum Documentation – All documents prepared in the ordinary course of business, related to civil subpoena files and/or subpoena duces tecum documents that no longer serve a business purpose, dated prior to January 1, 2003.

Moving Citations and Parking Citations – All documents related to moving citations and parking citations, that occurred prior to January 1, 2003.

Court Case File Complaint Records – All records related to criminal complaints, whether filed on or not, dated prior to January 1, 2003.

Attachment D

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SUNNYVALE APPROVING DESTRUCTION OF CERTAIN
RECORDS (DEPARTMENT OF PUBLIC SAFETY)**

WHEREAS, Sections 34090, 34090.5 and 34090.7 of the Government Code authorize the destruction of certain City records under conditions therein provided; and

WHEREAS, the Director of Public Safety has requested the City Council to approve the destruction of records specified in the inventory attached to the Request for Permission to Destroy Public Records and attached hereto as Exhibit "A"; and

WHEREAS, the City Attorney has endorsed the destruction of such records; and

WHEREAS, the City Attorney and the Director of Public Safety have stated with regard to the above-referenced records that none of them:

- (a) affects the title to real property or liens thereon;
- (b) is a court record;
- (c) is a record required to be kept by statute;
- (d) is an ordinance, resolution or the minutes of the City Council or any board or commission of the City of Sunnyvale; or
- (e) is a record less than two years old, or, if less than two years old, that it is a duplicate of a record remaining on file.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT the destruction of the above-referenced records is hereby approved.

Adopted by the City Council at a regular meeting held on _____, 2006, by the following vote:

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AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

The undersigned hereby consents to the destruction of the above-referenced records.

Dated: _____, 2006

David Kahn, City Attorney

**EXHIBIT "A"
to
RESOLUTION NO. _____**

Sunnyvale Department of Public Safety

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